

AG Contract No KR02-1527TRN
ADOT ECS File No.: JPA 02-034
Amendment # 1
Project: TEA-SVS-0(5)P
TRACS No. SL 489 01C
Section: Buffalo Soldier Trail Pathway
BUDGET SOURCE ITEM #

**AMENDMENT NO. ONE
INTERGOVERNMENTAL AGREEMENT**

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF SIERRA VISTA

THIS AGREEMENT is entered into 12th December, 2003, **Amendment Number 1** to JPA 02-034, AG Contract No: KR02-1527TRN, filed with the Secretary of State under No. 25523, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and CITY OF SIERRA VISTA, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-334 and 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.

This Agreement is being amended as follows: 1) With the consent and approval of the FHWA and the State, using Arizona Procurement Procedures, the City of Sierra Vista is approved to self administer the Project under the Scope of Work, Article II 1,a,b. 2) Include water and electrical services for the pathway area under the Scope of Work, Article II 6. 3) Add the Non-Availability of Funds and the Americans with Disabilities Act (Public Law 101-336, 42 U S C. 12101-12213) to this agreement under the Miscellaneous Provisions, Article III

THEREFORE THE AGREEMENT IS AMENDED AS FOLLOWS.

#01
NO. 25523
Filed with the Secretary of State
Date Filed: 12/12/03
Janice K. Brewer
Secretary of State

By: Dwight D. Haernewald

II. SCOPE OF WORK**Article II. 1a. b., and 6. are deleted and replaced as follows:**

1. The State will agree to be the City's authorized agent for the acquisition of federal funds and submit a program containing the aforementioned Project to FHWA with the recommendation that it be approved for construction and funding.

a. The City will provide design plans, specifications and such other documents and services required for construction bidding and construction. Incorporate or resolve State's review comments. Confer with the State on any Project related contract modifications. Be responsible for any design consultant and contractor claims for extra compensation due to delays or whatever reason attributable to the City.

b. With the aid and consent of the FHWA, and State, using Arizona Procurement Procedures; the City will advertise for bids, receive and open bids, enter into contract(s) with a firm(s) to whom the award is made for the construction of the Project. The Project will be performed, completed, inspected, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions and Standard Specifications. After the award of the construction contract(s), invoice the State for federal funds progress payments for the direct cost of construction, plus construction engineering and administration fees estimated at \$500,000 00

6. Upon completion of construction, provide for at its own cost and as an annual item in its budget, water service and electrical power, for the pathway and perpetual maintenance for the Project.

Article III. 10 & 11 are added to the following language:

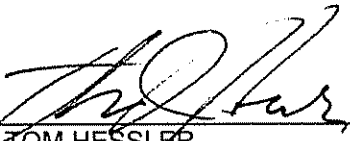
10 This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination"

11. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

EXCEPT AS AMENDED HEREIN, ALL OTHER terms and conditions of the original Agreement remain in full force and effect

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF SIERRA VISTA

By 

TOM HESSLER
Mayor

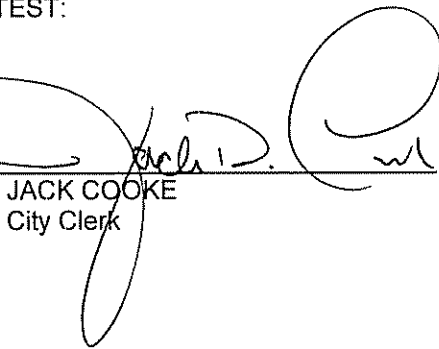
STATE OF ARIZONA

Department of Transportation

By 

SUSAN TELLEZ
Contract Administrator

ATTEST:

By 

JACK COOKE
City Clerk

RESOLUTION 4832

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; AUTHORIZING THE CITY TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION TO CONSTRUCT A BUFFALO SOLDIER TRAIL MULTI-USE PATH; AND AUTHORIZING AND DIRECTING THE CITY MANAGER, CITY CLERK, CITY ATTORNEY OR THEIR DULY AUTHORIZED OFFICERS AND AGENTS TO TAKE ALL STEPS NECESSARY TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION.

WHEREAS, it is the settled policy of the City Council to authorize City staff to seek, make application for, and accept any Federal and State funding assistance for improvements to our community that are beyond the funding capability of City revenues, when it is determined by the City Council to be in the best interest of the City; and

WHEREAS, the City and State share responsibilities of providing streets and public roadways which are safe and meet the transportation needs of the general public; and

WHEREAS, traffic volume on Buffalo Soldier Trail makes it necessary to construct a multi-use path in order to improve safety by separating pedestrians and bicyclists from vehicular traffic; and

WHEREAS, it is in the mutual interest and benefit of the Arizona Department of Transportation (ADOT) and the City to construct the multi-use path along Buffalo Soldier Trail; and

WHEREAS, both parties desire to enter into an intergovernmental agreement that will allow ADOT to be responsible for five hundred thousand dollars (\$500,000) of the cost of the project, with the City's share estimated to be seventy-one thousand two-hundred thirty-six dollars (\$71,236) of the project costs.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, AS FOLLOWS:

SECTION 1

That the settled policy of the City Council of seeking Federal and State funding assistance, most recently affirmed by Resolution 4670, be, and hereby is, reaffirmed.

SECTION 2

That the City Council approves entering into an Intergovernmental Agreement with ADOT to share the project costs of constructing a multi-use path along Buffalo Soldier Trail, which is estimated to be \$500,000 from ADOT and \$71,236 from the City.

SECTION 3


The City Manager, City Clerk, City Attorney or their duly authorized officers and agents are hereby authorized and directed to take all steps necessary to carry out the purposes and intent of this resolution.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA THIS 12th DAY OF SEPTEMBER, 2002.

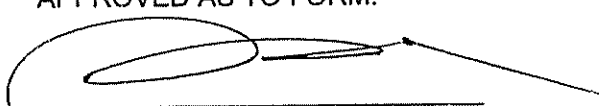
ATTEST:


GARY M. McPherran, CPA
City Clerk

(Attest)


THOMAS J. HESSLER
Mayor

APPROVED AS TO FORM:


STUART L. FAUVER
City Attorney

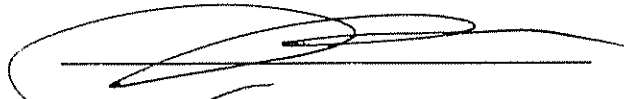
PREPARED BY:
D. MICHAEL CLAWSON
Purchasing Manager

JPA 02-34

APPROVAL OF THE CITY OF SIERRA VISTA ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the City of Sierra Vista and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement

DATED this _____ day of _____, 2003.



Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE 602.542.8855

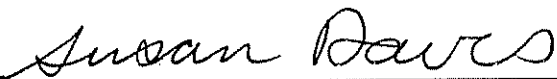
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR02-1527TRN (JPA 02-034), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED December 4, 2003.

TERRY GODDARD
Attorney General



SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

/ss

att.

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF SIERRA VISTA

THIS AGREEMENT is entered into 30th September, 2002, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF SIERRA VISTA acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.

3. Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.

4. Such project within the boundary of the City has been selected by the City; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration (FHWA) for its approval.

5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

NO. 25523
Filed with the Secretary of State
Date Filed: 09/30/02

Petrey Gayless
Secretary of State

By: Vilmy D. Graenewald

6. The City, in order to obtain federal funds for the construction of the project, is willing to provide City funds to match federal funds in the ratio required or as finally fixed and determined by the City and FHWA, including actual construction engineering and administration costs (CE).

7. The work embraced in this agreement is the Design and Construction of Buffalo Soldier Trail Pathway, and the estimated costs are as follows:

Total Design Cost:	\$53,975	Percentage:	Ø%
Federal Aid Shared:	\$ Ø	Percentage:	100%
Local Match:	\$53,975		
Total Construction Cost:*	\$517,261	Percentage:	
Federal Aid Share:	\$500,000	Percentage:	
Local Match:	\$ 17,236		
*Includes Construction Engineering at 15% and Change Orders at 5%.			
Grand Total Costs:	\$571,236	Percentage:	94.3%
Federal Aid Share:	\$500,000	Percentage:	Exceeds 5.7% (12.5%)
Local Match:	\$ 71,236		

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction, the City will and does hereby designate the State as authorized agent for the City. The State hereby agrees to be authorized agent for the City, and with the aid and consent of the City and the FHWA will proceed to advertise for, receive and open bids, and subject to the concurrence of the City and the FHWA, enter into a contract with a firm on behalf of the City to whom the award is made for the construction of the project; such project to be performed, completed, accepted and paid for in accordance with the instructions and requirements of the City and the Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation. The State will enter into a Project Agreement with FHWA on behalf of the City covering the work embraced in said construction contract and will request the maximum federal funds available, including construction engineering and administration costs. Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.

b. Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the City shall be obligated to incur and will pay for said increased costs.

2. Prior to the solicitation of bids, the City shall deposit funds with the State in the amount determined to be necessary to match federal funds in the ratio required.

3. The City shall acquire the necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired prior to advertisement for bid.

4. The City shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been or will be removed there from, prior to the start of construction.

5. The City shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use.

6. Upon completion of construction, the City shall provide for, at its own costs and as an annual item in its budget, proper maintenance, including, but not limited to, traffic signals, signs, islands curbs and markings necessary for the purpose of regulating, warning and guiding traffic, all in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. The City assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the City and that the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or attorneys' fees.

2. The cost of the design, construction and construction engineering work covered by this agreement is to be borne by FHWA and City, each in the proportion prescribed or as fixed and determined by the FHWA as stipulated in this agreement. Therefore, City agrees to furnish and provide the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work; provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another entity.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue – Mail Drop 616E
Phoenix, AZ 85007
FAX (602-712-7424
lgrandy@dot.state.az.us

City of Sierra Vista
City Manager
1011 N. Coronado Drive
Sierra Vista, AZ 85635

9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

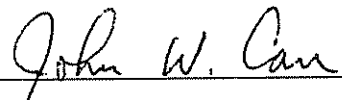
CITY OF SIERRA VISTA

By 

TOM HESSLER
Mayor

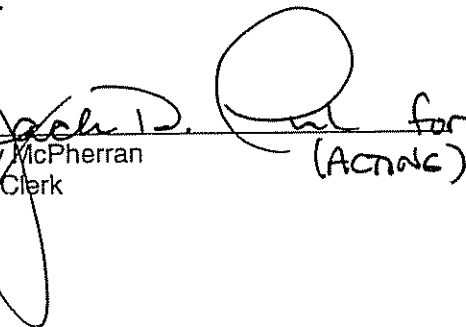
STATE OF ARIZONA

Department of Transportation

By 

JOHN W. CARR
Acting Contract Administrator

ATTEST:

By 

Gary McPherran
City Clerk
(Attest)